(1) Special Appeal (Civil) No.26/98
Amar Singh & Ors Vs. Prabhatya & Ors.
(In SB Civil Misc.Appeal No.496/89)
And
(2) Special Appeal (Civil) No.2507/97 (Def.)
Smt. Hukama Bai & Ors. Vs. Amar Singh & Ors.
(In SB Civil Misc.Appeal No.437/89)

**Date of Order ::: 25/08//05**

***Hon'ble Mr. Justice V.K.Bali***
***Hon'ble Mr. Justice Ajay Rastogi***

Mr. Satyendra Kumar Gupta, for appellants (Bus owner & driver)
Mr. L.L.Gupta for respondents (claimants)

By the Court : (Ajay Rastogi, J.)

These two special appeals are being disposed of by this common judgment as they arise out of judgment dt.29/11/96 of learned Single Judge in CMA No.437/89 of claimants and No.496/89 of owner & driver of offending bus No.RJU 883.

Special Appeal (Civil) No.2507/97 (Defect) which is time barred by 52 days, has been filed by claimants for enhancement of compensation awarded, alongwith application U/s 5 of Limitation Act for condonation of delay. Since both these appeals arose out of common order dt.29/11/96 of learned Single Judge, at joint request of parties, this SA(C) No.2507/97 (Def) (wherein notice of application U/s 5 of Limitation Act was issued) was tagged with SA(C) No.26/98 filed by owner & driver of offending vehicle who are appellants in SA(C) No.26/98 & respondents in SA(C)(Def) No.2507/97 and are represented by their Counsel, we are satisfied with the explanation furnished and accordingly the delay in filing SA(C)

(Def) No.2507/97 stands condoned. Hence these appeals are heard together and disposed of on merits.

By judgment dt.29/11/96, learned Single Judge dismissed CMA No.496/89 of owner & driver of offending vehicle, while CMA No.437/89 of claimants filed for enhancement has been allowed and the Award dt.25/09/89 passed by Motor Accident Claims Tribunal, Gangapur City ("***Tribunal***") was modified by enhancing compensation to Rs.1,15,000/- (from Rs.70,000/-) with 12% annual interest from the date of claim petition till payment from the driver, owner & insurance company whose liability was made limited to Rs.50,000/-.

Facts in brief, are that Ramcharan (deceased) who was going on 10/04/85, met with an accident by offending Bus RJU 883, which hit him from his back resulting into his death at the spot on account of rash & negligent driving of the offending vehicle. The deceased was 25 years of age and daily wager earning Rs.25/- per day. On claim petition filed by Smt.Hukma Bai and other family members of the deceased, the Tribunal taking note of his age so also income besides loss caused on account of love & affection, finally awarded a sum of Rs.70,500/-, against which claimants preferred CMA No.437/89 for enhancement of compensation, while non-claimants (owner & driver of offending bus) also preferred on the ground that the Tribunal restricted liability of insurance company to Rs.50,000/- since it was a case of date prior to coming into force of the Motor Vehicle Act, 1988. Both these civil misc. appeals were heard together and decided by

learned Single Judge vide common judgment dt.29/11/1996, as indicated in preceding paras. Hence these special appeals.

Shri Satyendra Gupta, Counsel for appellants (driver & owner of Bus) has urged that finding recorded by Tribunal on the issue of rash & negligent driving of offending bus, is totally perverse and no such liability could have been fastened upon appellants and that apart, amount enhanced by learned Single Judge is without any material on record and requires interference by this Court.

Per contra, Shri L.L.Gupta, Counsel for claimants contended that while examining case for enhancement, learned Single Judge committed serious error and in fact, earnings of deceased were more than what has been computed by learned Single Judge, and future prospects of his earning has not been taken care of while computing loss of income by learned Single Judge.

None has appeared on behalf of Insurance Company despite service of notices in SA(C) No.26/98.

We have considered contentions of both the parties and perused material on record. On the issue of rash & negligent driving of offending vehicle, we find comprehensive appreciation and analysis of evidence on record not only by Tribunal but also by learned Single Judge. In the reply to claim petition, it has been admitted by non-claimants that the offending vehicle had hit cyclist from his back and that apart, two eye witnesses in their statements clearly deposed that

offending vehicle hit cyclist and further Amar Singh (driver of offending bus) admitted in his statement that the bus hit the cycle which was moving on his left side and he stopped the bus only upon hearing noise from the persons on road. We do not find any error in concurrent finding of fact on the issue of rash & negligent driving of the offending vehicle and it requires no interference by this Court.

As regards finding recorded by learned Single Judge for computing income of deceased on 30 working days in a month, we find that Tribunal calculated monthly income based on 25 working days but learned Single Judge found no material to establish from evidence on record that deceased did not get work for five holidays in a month, and it is common knowledge that normally daily wagers used to work for 30 days in a month and in the absence of any contrary evidence it can not be presumed that deceased did not get job for five holidays in a month. In these circumstances, monthly income @ Rs.25/- per day was worked out to Rs.750/- and Rs.9000/- p.a. and after deducting 1/3$^{rd}$ for personal use of annual income, Rs.6,000/- p.a., was loss of income to family of deceased and after applying multiplier of 15 looking to age of deceased being 25 years at the time of accident, total loss of dependency was worked out to Rs.90,000/- and similarly, loss of consortium & deprivation of love & affection to children of deceased were assessed and enhanced to Rs.15,000/- & Rs.10,000/- respectively. In our opinion, no error has been committed by learned Single Judge in

enhancing amount of compensation holding claimants to be entitled for a sum of Rs.90,000/- + 15,000 + 10,000/- = 1,15,000/- with interest @ 12% per annum from the date of claim petition till actual payment. In view of what has been observed above, we find that compensation has adequately been enhanced by learned Single Judge and it does not require any interfernece by this Court.

However, Shri L.L.Gupta, Counsel for claimants lastly contended that despite amount awarded and enhanced by learned single Judge, claimants have not been able to get compensation awarded, so far and he placed reliance upon judgment of Apex Court in ***Pramod Kumar Agrawal Vs. Mushtari Begum (2004(8) SCC 667)*** and submitted that even in case of limited liability, Insurance Company is under obligation to pay amount of compensation awarded and may simultaneously recover the same from owner & driver of offending vehicle in appropriate proceedings.

We find that out of total amount awarded by learned Single Judge, this Court vide order dt.06/03/98 stayed operation of the impugned Award subject to the condition that appellants (in SA(C) 26/98) shall deposit Rs.33,000/- which shall be withdrawn by claimants without furnishing security, apart from amount of Rs.50,000/- to be paid by insurance company to the claimants. Sufficient part of compensation has been paid and when the owner & driver of the offending vehicle are before this Court, balance of compensation awarded can be recovered by initiating execution

proceedings against them, hence we are not inclined to direct insurance company to pay firstly to claimants and then to recover the same from owner & driver of offending vehicle.

Consequently both these appeals are dismissed. No order as to costs.

**(Ajay Rastogi), J.** **( V.K.Bali ), J.**

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